

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's)	
Rules to Ensure Compatibility)	CC Docket No. 94-102
with Enhanced 911 Emergency)	
Calling Systems)	
)	
Request for Waiver by Cingular)	
Wireless LLC)	
)	
Request for Waiver)	
by Verizon Wireless)	
)	
Wireless E911 Phase II Implementation)	
Plan of Nextel Communications, Inc.)	

**REPLY OF NENA, APCO, NASNA
AND THE TARRANT COUNTY 9-1-1 DISTRICT**

The National Emergency Number Association (“NENA”), the Association of Public-Safety Communications Officials-International, Inc. (“APCO”) and the National Association of State Nine One One Administrators (“NASNA”) (collectively, “Public Safety Organizations”), together with the Tarrant County, Texas 9-1-1 District (“District”), hereby reply to the comments of others in the captioned proceedings.¹

Because the comments of CTIA and Nokia/Motorola echo petitioners’ complaints of “strict liability” for wireless carrier waiver compliance and repeat meritless due process arguments already discussed in our Oppositions of December 19th, we focus on the views of several smaller wireless carriers and trade associations.

¹ The Public Safety Organizations opposed the three petitions for reconsideration in separate documents filed December 19, 2001. The District associated itself with the Oppositions. Because the comments discussed here address the three petitions together, our reply does the same.

Cellular Mobile Systems of St. Cloud, et al.; Copper Valley Wireless; First Cellular of Southern Illinois; and Rural Cellular Association (“RCA”) present the same strict liability and due process grievances brought by the petitioners, but take somewhat different approaches. St. Cloud et al. are concerned that “as small carriers with nominal influence over manufacturers,” (Comments, 1-2) they nevertheless could face disproportionate expenses in defending at the Enforcement Bureau against equipment or service vendor delays entirely beyond their control. Copper Valley and First Cellular argue that this lack of control over their suppliers should produce a different waiver standard for “local” carriers than for those with national footprints, but they do not elaborate on how the standard should be revised. RCA focuses on refuting Nextel’s claims that smaller carriers have received preferential treatment and finds that the Commission’s creation of at least two classes of carriers is appropriate, but does not pursue any new framework for small-carrier waivers.

In their Oppositions, NENA, APCO and NASNA reviewed precedents affirming the ample “prosecutorial discretion” enjoyed by the FCC in determining how to enforce its rules. While we found no particular fault with deferring decisions on waiver applications filed by regional or local carriers – noting that one of the Commission’s aims was to educate these providers by the approach taken toward their larger competitors – neither did we recommend lesser waiver standards for smaller carriers.

After all, the characteristics of carriers not classified as “national” are hardly uniform, but instead vary greatly. Even though the Commission declined to rule contemporaneously on the waiver petitions filed by Qwest and Alltel, it took comments

in roughly the same period as for the national carriers and could easily have chosen to classify Qwest and Alltel as larger carriers.

The small-carrier commenters say they cannot enjoy “economies of scale” (RCA, 8) and invite us to assume that “the legal expense of an Enforcement Bureau proceeding is approximately the same for large and small carriers.” (St. Cloud et al, 4) Commenters offer no documentation of scale economies in wireless service. And it is counter-intuitive to imagine that a small carrier, if it truly is more vulnerable to vendors than a larger purchaser, would face the same legal hurdle as a larger carrier in defending against a failure of timely delivery. The defense for large and small carriers alike can only be that they worked diligently – as their different capabilities permitted -- to hold their suppliers to the promised schedule. If the schedule slips through no fault of a carrier, we would expect the Commission to recognize this. But there is no demonstrated need for a different waiver standard.

For the reasons discussed, NENA, APCO, NASNA and the District urge denial of the petitions for reconsideration in line with their earlier Oppositions.

Respectfully submitted,

NENA, APCO, NASNA and the DISTRICT

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January 4, 2002

Certificate of Service

The foregoing Reply of NENA, APCO, NASNA and the Tarrant County 9-1-1 District was served today by regular mail or e-mail attachment on at least one of the Washington-based representatives of each of the commenting parties whose views are discussed in the Reply.

Cellular Mobile Systems of St. Cloud, et al.

Copper Valley Wireless

First Cellular of Southern Illinois

Rural Cellular Association

Nokia and Motorola, filing jointly

January 4, 2002

James R. Hobson